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Attorneys for Defendant GreatBanc Trust Company

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HILDA L. SOLIS, Secretary of the United States Department of Labor,

Plaintiff,

vs.

GREATBANC TRUST COMPANY, et al.,

Defendants.

Case No. ED-CV12-1648-R (DTBx)

DEFENDANT GREATBANC TRUST COMPANY'S NOTICE OF MOTION AND MOTION TO DISMISS COUNT II OF THE COMPLAINT

Date: March 4, 2013
Time: 10:00 a.m.
Hon. Manuel L. Real
Ctrm: 8

[MEMORANDUM OF POINTS AND AUTHORITIES AND (PROPOSED) ORDER FILED CONCURRENTLY HEREWITH]

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on March 4, 2013, at 10:00 a.m., or as soon thereafter as this matter may be heard in Courtroom 8 of the United States District Court for the Central District Court of California, 312 North Spring Street, Los Angeles, California 90012, the Honorable Manuel L. Real presiding, Defendant GreatBanc Trust Company ("Defendant") will, and hereby does, move for an order dismissing without leave to amend Count II of the Secretary of the United States Department of Labor's ("Secretary") Complaint.

This motion is made on the following grounds: Construed in the light most favorable to the Secretary, the Complaint fails to allege facts in support of Count II sufficient to state a claim upon which relief can be granted. Count II of the Complaint asserts that the indemnification provision contained within the engagement agreement between Defendant and Sierra Aluminum Company violates the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), Section 410(a), 29 U.S.C. Section 1110(a). This claim fails as a matter of law because the Secretary does not and cannot allege facts establishing that (1) the indemnification agreement at issue provides indemnification to GreatBanc for conduct that ERISA prohibits, or (2) that there has been a finding that GreatBanc breached its fiduciary responsibilities to the Sierra Aluminum Company Employee Stock Ownership Plan ("ESOP"). *See, e.g., Johnson v. Couturier*, 572 F. 3d 1067, 1081 (9th Cir. 2009).

This motion will be based on this Notice of Motion and Motion, the concurrently filed Memorandum of Points and Authorities in support of the motion, [Proposed] Order, the Court's file in this case, all reply papers, and on all other

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matters which may be judicially noticed or adduced at the hearing of this matter.

Dated: January 16, 2013

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Nicole A. Diller
Nicole A. Diller
Attorneys for Defendant
GreatBanc Trust Company